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RIGHTS OF THE PARTIES TO A CONTRACT OF AFFREIGHTMENT AFTER THE VESSEL HAS BEEN JUSTIFIABLY ABANDONED. — It has long been settled that the sailor who abandons his ship can recover no wages,[1] and that the master who fails to bring his cargo to the port designated can collect no freight[2] — not even a *pro rata* amount on quasi-contract for bringing the goods part way.[3] It is equally well settled that, when the vessel's safety is sufficiently menaced by the perils of the sea, the master may abandon her without incurring liability for breach of contract.[4] In recent years, however, frequent contentions have arisen regarding the rights of the parties to the contract of affreightment after the vessel has been abandoned and rescued by salvors. In England it was at first held that the contract was entirely ended by the act of abandonment;[5] but later decisions hold that leaving the vessel under these circumstances is simply a justifiable repudiation of the contract, of which the other party may take advantage, and the courts decline to state what would be ruled if the ship-owner should follow and regain possession from the salvors before the cargo-owner has acted.[4] Within a few weeks the United States Supreme Court, although not going to the extent of holding the contract at an end, has decided that "the abandonment, at least, gives an irrevocable power to the cargo-owner to decline to be further bound." *The Eliza Lines*, U. S. Sup. Ct., Oct. 30, 1905.

No fault can be found with the result reached in any of the cases examined, for in all of them the owner of the cargo had suffered considerable injury from the act of abandonment; but it is impossible to subscribe to all

[1] Lewis *v.* The Elizabeth and Jane, 1 Ware (U. S.) 41.
[2] Post and Russell *v.* Robertson, 1 Johns. (N. Y.) 24.
[3] See The Kathleen, L. R. 4 A. & E. 269.
[4] The Arno, 8 Aspin. 5.
[5] The Kathleen, *supra.*

the reasoning they contain and the inferences to be drawn therefrom. It does not seem sound to say that the act of abandonment necessarily ends the contract, or that the first one of the parties who obtains possession of the derelict has the right to elect whether or not the contract shall continue to be binding, or that the cargo-owner may always rescind when the ship has been deserted. The cases are clearly analogous to those of impossibility, danger,[6] or sickness,[7] where the party affected is always excused from liability for not going on under the contract, but where the future rights of the parties are dependent, principally, upon the materiality of the breach, though, to a certain extent also, upon the subsequent conduct of the delinquent party. So, here, if the result of an excusable abandonment should be to make the carrying out of the contract a different undertaking from that originally contemplated, neither party would be further bound;[8] but, if the breach be but a slight one, so that the cargo is not harmed nor its owner injured materially by the delay, and if the master should give prompt notice of his intention to proceed before the cargo-owner has changed his position, he should be allowed to go on, for it is not uncommon for the law to disregard a technical breach or permit a slight one to be cured.[9] Of course, as a practical matter, the breach will nearly always be material in these instances, but a case can easily be conceived in which the storm unexpectedly subsides and the crew returns to the ship in a few hours. It is sometimes argued that the ship-owner should be allowed to continue, in analogy to the rule in cases of shipwreck, where the goods may even be transferred to another vessel and the freight earned;[10] but that is a different case, for there the crew are involuntarily separated from the vessel without any act of the will, and consequently there is no real abandonment.

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LIABILITY OF FOREIGN REAL ESTATE TO COLLATERAL INHERITANCE TAX. — The very general adoption of inheritance and succession taxes has led to a careful examination by the courts of the theory on which they are based. An inheritance tax seems clearly to be not a tax on the property itself, nor on the legatee, but a tax on the privilege of succeeding to property on the death of the owner.[1] The fact that the burden of the tax may ultimately fall on the property, and that the property is sometimes subjected to a lien until the tax is paid, has led some courts to construe the tax as one on the property as well as on the privilege;[2] but this seems to confuse the nature of the tax with the method of its enforcement. The right to take property by descent or devise is a privilege granted by the law, not a natural right; and the sovereignty which grants it may impose conditions on it.[1] Theoretically, it would seem that the state might revoke this privilege at any time, and make itself the universal legatee of all decedents. Since succession to property is by permission of the sovereign, the permission can relate only to property over which the sovereign has control. A state has absolute dominion over all property within its territorial bounds, and may

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[6] Lakeman *v.* Pollard, 43 Me. 463.
[7] Poussard *v.* Spiers, 1 Q. B. D. 410.
[8] Jackson *v.* The Union Marine Insurance Co., L. R. 10 C. P. 125.
[9] Bettini *v.* Gye, 1 Q. B. D. 183.
[10] Shipton *v.* Thornton, 9 Ad. & E. 314.

[1] Magoun *v.* Illinois, etc., Bank, 170 U. S. 283.
[2] Bittinger's Estate, 129 Pa. St. 338.